

ZONING PLAN

Chapter of the Marquette County Comprehensive Plan



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SECTION 1: INTRODUCTION

PURPOSE OF ZONING

Zoning is a method of regulating land uses for the betterment of the land and the community. It is one of the means for implementing a community's long range plans. In addition, it is essential for understanding present conditions, future growth potential and the need for infrastructure and services. It is a legal tool that requires maintenance and skilled use to be effective.

The County does not have a zoning ordinance. Therefore, township zoning ordinances are a very important tool for implementation of a county's goals and policies. The enabling legislation authorized county review of ordinances and amendments proposed by a township. The county could then determine if a township ordinance supported implementation of the county's plans. The County could give comments and make recommendations but the decision to adopt or amend zoning belonged (and still does) to the township.

To date, there has never been a comprehensive review of the local zoning ordinances within the county. This plan will look at the required changes and assess the status of ordinances and their administration in the 20 local ordinances within Marquette County.

This County Plan does not eliminate the need for local units to create and adopt their own zoning plan or the need to document the consistency between their plans and their zoning ordinance and related decisions.

Benefits of reviewing zoning ordinances and maps include:

- Identifying trends
- Acquaintance with techniques, tools and language
- Understanding challenges
- Identifying risks for legal action.
- Evaluating trade-offs,
- Administration of issues and practices
- Record keeping, and
- Cost savings.

All decisions relating to zoning should focus upon implementing a well-thought-out plan that addresses the suitability of the land and infrastructure to the proposed use and the needs of the community. The plan(s), upon which the ordinance is based, must be updated regularly. The ability to amend the zoning ordinance should not make it "just another hoop to jump through". It should never ignore physical limitations of the land. It must be consistent with the goals and policies of the community.

Any ordinance that is not based upon official plans and policies, or does not comply with the State's Zoning Enabling legislation, has a weak legal foundation.

Zoning cannot:

- automatically cure past mistakes in land use and development.
- assure development or re-development .
- function as a property maintenance code.
- be used as a means of keeping an undesired land use out of a local unit.

Zoning can:

- direct redevelopment to targeted areas.
- help stabilize land values through preventing and controlling incompatible land uses.
- offer protection from land uses to which are objectionable but legal.
- minimize land use conflicts .
- protect natural resources.
- help implementation of official policies on
 - infrastructure to meet community needs,
 - containing costs,
 - public services.
- make a place desirable for living, working, and playing.

HISTORY OF ENABLING LEGISLATION

Prior to July 1, 2006, three separate laws directed zoning efforts by governmental units within Michigan. Two of these laws predated the three laws authorizing a Planning Commission. A municipality could adopt zoning under the City and Village Zoning Act, (PA 207 of 1921). If the city or village had a planning commission created under the Municipal Planning Act, PA 285 of 1931, that planning commission was responsible for developing the ordinance for consideration. If not, a commission could be appointed under the zoning act. A township could adopt and enforce its own ordinance under the Township Rural Zoning Act (PA 184 of 1943). That act authorized the creation of zoning boards for the purpose of developing the ordinance. Township planning commissions were not authorized until the passage of Act 168 of 1959. A county could adopt a zoning ordinance under the County Zoning Act (PA 183 of 1943). County Planning Commissions were enabled by Act 282 of 1945. Only townships, without their own ordinances fell under the county zoning ordinance.

Under this system, in some local units planning commissions developed plans and zoning boards often developed zoning ordinances. The two bodies often did not function collectively. Occasionally, a planning commission was established under dual enabling legislation. Zoning boards may have become defunct and the duties assumed by the planning commission. In others, the name of the board may have been simply changed, either by the legislative body or the zoning board itself.

Public Act 110 of 2006, The Michigan Zoning Enabling Act (MZEA)

On July 1, 2006, Public Act 110 of 2006, The Michigan Zoning Enabling Act (MZEA) became effective and the three other enabling acts were repealed. The new law applies to all three types of local governmental units. It contains simplified language. It requires local units to base their zoning ordinance on their master plan.

MZEA states in Sec. 301(2) *“Except as otherwise provided in this subsection, if the powers and duties of the zoning commission have been transferred to the Planning commission as provided by law, the planning commission shall function as the zoning commission of the local unit of government. By July 1, 2011, the legislative body shall transfer the powers and duties of the zoning commission to the planning commission. Except as provided under this subsection, beginning July 1, 2011, a zoning commission’s powers or duties under this act or an ordinance adopted under this act shall only be performed by a planning commission”*. Without a properly established planning commission, a township’s zoning ordinance becomes null and void.

Public Act 33 of 2008, The Michigan Planning Enabling Act (MPZA)

Like the new zoning enabling act, this planning enabling act applied to all three types of local governmental units. The following Acts were repealed: 285 of 1931, 282 of 1945, 168 of 1959. Plans adopted under these acts do not require re-adoption, but are subject to the requirements of Act 33 of 2008.

Local legislative bodies may increase the powers and duties of their planning commission through an ordinance. Provisions of the act do not apply to the powers and duties of planning commissions created through a charter. Other provisions, such as officers, meetings, bylaws, records, employees, contracts and expenditures apply.

The Public Act 33 of 2008, Michigan’s Planning Enabling (MPEA) legislation also calls for coordination with adjacent local units to avoid conflicts in master plans and zoning. Zoning must also be consistent with plans for airports in the vicinity.

MARQUETTE COUNTY ZONING HISTORY

The County’s first zoning ordinance was adopted in 1938. The Ordinance was replaced in 1977. This “new” ordinance applied to twelve townships: Champion, Chocolay, Ely, Ewing, Humboldt, Powell, Republic, Skandia, Tilden, Turin, Wells, and West Branch. Over the years, Chocolay, Republic, and Tilden townships adopted their own ordinances with assistance from the County Planning Commission. The County Planning Commission reviewed new zoning ordinances, and map and text amendments after these items were proposed by the townships with their own ordinances.

The Marquette County Board rescinded the County’s Ordinance, effective on January 1, 1994. Anticipating this action, County Staff assisted the nine townships in adopting interim ordinances. The interim ordinances were replaced over a three-year period with adoption of a permanent ordinance. Ewing and Turin Townships opted not to adopt an ordinance upon

expiration of their interim ordinance. Currently those townships do not have any zoning regulations.

When the other townships' planning commissions considered changes to their ordinances, the County had 30 days to review zoning proposals and make recommendations to the Township Board. If the Township Board did not receive comments from the county within 30 days, they could assume that the county has waived its right of review. The local planning commission usually did not receive a copy of the county comments. The county did not receive confirmation of the adoption or modification to the proposed changes.

City and Village Zoning did not require County review. The City of Marquette and the County's Resource Management/Development Department exchange Planning Commission minutes. The RM/DD does not exchange minutes with the Cities of Negaunee and Ishpeming.

SECTION 2: ZONING PLAN

One of the most important changes of the MZEA is a requirement for ordinances to be based upon a plan (Sec. 203. (1)).

The plan is the guide for all zoning decisions

If the unit has a Planning Commission that meets the requirements of the MZEA, the Master Plan is the zoning plan.

Elements throughout the Master Plan, referencing land use and its regulation, should be drawn together into a chapter or separate document of the Master Plan. Having the elements in one place will prevent overlooking any of them and make it easier to determine if the local zoning ordinance is consistent with the plan. However, if the Master Plan is seriously outdated, it may be necessary to make additional changes. It is essential that there be consistency between the zoning (master, comprehensive, or stand-alone) plan(s) and the zoning ordinance.

The Zoning Plan must:

- address how the future land use map relates to the districts on the zoning map,
- clearly explain any discrepancies between the two maps.
- identify criteria to be used in determining if a zoning district change should be made (MPEA, §33.-(2)(d))

Major goals should be identified—"goals include, but are not limited to . . . water quality, more efficient and economical provision of government services, conservation of energy . . . "

The plan should promote the community's vision of its future. It should also promote the purposes listed in MZEA and MPEA:

Public Act 110 of 2006, the Michigan Zoning Enabling Act (MZEA), promotes:

- the public health, safety, and general welfare,
- use of lands in accordance with their character and adaptability,
- limiting improper use of land,
- conserving natural resources and energy,
- meeting the needs of the state's residents for food, fiber, natural resources, places of residence, recreation, industry, trade, service, other uses of land,
- insuring uses of the land are in appropriate locations and relationships,
- avoiding overcrowding of population,
- providing adequate light and air,
- lessening congestion on the public roads and streets,
- reducing hazards to life and property, to facilitate adequate provision for a system of transportation, sewage disposal,
- safe and adequate water supply, education, recreation, and other public requirements,
- conserving expenditure of funds for public improvements and services, and
- conforming with the most advantageous uses of land, resources, and properties.

Public Act 33 of 2008, the Michigan Planning Enabling Act (MPEA) promotes:

- A system of transportation to lessen congestion on streets,
- Safety from fire and other dangers,
- Access to light and air,
- Healthful and convenient distribution of population,
- Good civic design and arrangement and wise and efficient expenditure of public funds,
- Public utilities such as sewage disposal and water supply and other public improvements,
- Recreation, and,
- Use of resources in accordance with their character and adaptability.

Local plans should be referenced by name. Several, if not all, of the local unit's major goals should be identified. For example --- *"Goals of this ordinance include, but are not limited to water quality, more efficient and economical provision of government services, . . . "*

SECTION 3: PLANNING COMMISSIONS

Planning commissions created under PA 285 of 1931, PA 282 of 1945, or PA 168 of 1959 should verify through their local clerk and legal advisor that zoning authority was granted. If they do not have zoning authority, the local legislative body will need to transfer those powers under MZEA. Any planning commission with planning powers created under PA 285 of 1931, PA 282 of 1945, or PA 168 of 1959 will retain that power under MZEA.

MPEA requires city and township planning commissions to have 5, 7, or 9 appointed members. If the planning commission was created under PA 285 of 1931 one of the members may be a member of the legislative body. In all other townships, one member of the legislative body shall be a member of the planning commission.

Counties may have 5, 7, 9, or 11 members on their planning commission. The Marquette County Planning Commission has been operating with only 6 members. One of those members is a county commissioner. Resource Management / Development staff have been working with the County's Civil Counsel to rectify this problem.

MPEA also requires a diverse representation of important segments of the community on the Planning Commission. The diversity should include to the extent possible interests such as agriculture, forestry, economic development, recreation, etc. as well as age and residential domicile type or location, etc. Planning commissions should make this requirement known to their legislative body for purposes of adjustment as vacancies occur. It is recommended that the representation be included in the formal action of appointment. See Table 1, Planning Commission Profiles, page A-1, for profiles of the local planning commissions.

SECTION 4: BOARD OF ZONING APPEALS

The purpose of the zoning board of appeals is to interpret and clarify regulations, review contested decisions of the zoning administrator, and vary dimensional requirements in cases of practical difficulty. Membership shall consist of not less than five members for units with 5,000 population or more and not less than three members for units with a population of less than 5,000. A zoning board of appeals serving a township shall include a representative of the local unit's planning commission. A zoning board of appeals serving a city may include a member of the city's planning commission. In spite of their dual memberships, these appointees may not vote twice on an issue that is presented to both bodies. Up to two alternate members may be appointed to a board. They sit when another member is unable to vote, has a conflict of interest, or is absent. They stay with a case until it has been decided. A majority of the total membership is required to pass a motion or grant a variance. No local body can overturn a decision of the Zoning Board of Appeals.

No local body can overturn a decision of the Zoning Board of Appeals.
Challenges must go to the Circuit Court.

Membership on the board shall be representative of the population distribution and the various interests present in the local unit of government. Members must make an effort to represent that interest in their deliberations. This last requirement is difficult to evaluate. Reviews of available ordinances and bylaws shows the local units of government have not identified areas of interest within their jurisdiction. Local boards often have limited turnover in appointments.

"Shall" is mandatory.
The area of interest and location must be documented.

It is recommended that the bylaws, under which a board operates, include a list the various interests within the community, and the concentrations of population within its boundaries. Due to differing populations in the local units, the areas of interest can be either broad or somewhat narrowly defined. Interests can include but are not limited to environment (mining, forestry, water quality); economics (commerce, employment, tourism, employment);

The ZBA must:

1. Adopt bylaws
2. Hear and respond to questions of interpretation
3. Hear and act upon appeals of enforcement orders
4. Hear and act upon variance requests.
5. Hear and act on special uses only if authorized.
6. May impose conditions with decisions to assure goals of the plan are met.
7. Must include findings of fact for their decisions.
8. Conduct open meetings and make timely decisions.

recreation, etc. Location representation could be urban, town development, rural, waterfront residential. It is not essential that all interests be represented at the same time, but there should be a variety at any one time plus opportunity for other interests to be represented over time.

This list should be prepared in consultation with the local unit's legislative body. That legislative body should consult the list prior to making appointments when ZBA terms

expire. They have the responsibility for making or confirming appointments. See Table 2, Zoning Board of Appeals Profiles, page A-2 for a profile of local Zoning Boards of Appeals.

SECTION 5: OTHER STAFFING

Other important individuals include the zoning administrator, and clerical staff. Depending upon the level of activity, the administrator may be a private consultant, a part-time employee or a full-time employee. Planning duties may also be assigned. Other local units may also employ a zoning assistant. Some of the duties, such as enforcement, may be assigned to another person.

The administrator should be aware changes in legislation and of legal pitfalls, bringing these items to the planning commission and zoning board of appeals' attention. The clerk should record minutes with sufficient detail of facts and the basis of the decisions.

Zoning Clerk responsibilities vary widely, but may include:

- Preparing notices
- Preparing agendas & reports
- Taking minutes with appropriate detail
- Filing & retrieving documents
- Assisting the public,
- providing information & forms

See Table 3, Staffing and Budget Profiles, page A-3, for the status of staff and local zoning budgets.

Zoning Administrator responsibilities include:

- providing information & forms
- assisting & educating the public, PC, ZBA, & legislative body
- reviewing applications
- issuing notices & permits
- inspecting properties
- investigating violations & enforcing the ordinance
- documenting & monitor non-conforming uses
- Maintaining and up-to-date map, ordinance & records
- Reporting problems & suggest solutions to the ZBA and PC
- Establish procedures for records management and document retrieval

SECTION 6: DISCRETIONARY DECISIONS

Judges often need to determine how a public body made a contested decision(s). Without stating the basis, a decision may seem arbitrary. As a result zoning ordinances must contain standards to guide decisions. The standards must be within the purview of the board or commission. Concise standards, if followed, will create a firm foundation for upholding decisions. Findings of fact, as they relate to standards, must be in the motion that makes the decision.

ADMINISTRATIVE STANDARDS

Review of Marquette County's 20 local ordinances show intertwining of many standards, procedures, and/or requirements. (See Table 4, Ordinance and Administration Profiles, page A-4). According to Webster's International Dictionary, "*a) a standard is something that is established by authority, custom, or general consent as a model or example to be followed: CRITERION, TEST; b) a definite level or degree of quality that is proper and adequate for a specific purpose*".

The dictionary defines a requirement as "*b) something called for or demanded: a requisite or essential condition*". A procedure is: "*1a. a particular way of doing or going about the accomplishment of something; 3. a series of steps followed in a regular orderly definite way: PROTOCOL*".

When ordinances are amended, consideration should be given to separation and proper labeling of standards, procedures, and requirements.

Local units use a variety of formats to present standards, procedures and requirements. Some have separate lists for the PC, ZBA and the ZA. The ZA may use one set of standards to make a decision. Board of Appeals might use slightly different standards to review that decision. Other ordinances contain separate lists of items to consider when evaluating site plans, or variances, conditional use permits or PUD applications. Others provide a comprehensive list applicable to all the activities of

the Planning Commission, Zoning Board of Appeals and the Zoning Administrator. This latter format can greatly reduce the volume of an ordinance. It will also make the standards easier for the public to locate and understand how their petitions will be evaluated. Consideration should be given to having copies available for elected officials, commissioners, and board members when they are dealing with zoning issues.

Decision makers must:

- use standards anytime a judgment is based upon their discretion.

Motions should reference:

- standards, and
- goals and /or policies, or
- plans

Administrative Standards.

For the purpose of administering this ordinance, the Zoning Administrator, the Planning Commission, the Board of Appeals and any other reviewing body or official shall consider each case as an individual case. Consideration shall be given to the location, size, and character of a use to determine if the use will be in harmony with the intent and appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts. Consideration shall be given to the following:

1. Intent of the Zoning District.
2. Current use of adjacent lands and neighborhood.
3. Physical appearance of existing or proposed structures (location, height, bulk of building as well as construction materials).
4. The suitability of the proposed landscaping in providing ground cover, screening and decoration on the site.
5. The nature and intensity of operations involved in or conducted in connection with the proposed use.
6. The time of use, the physical and economic relationship of one type of use to another.
7. The assembly of persons or employees, which may be hazardous to the neighborhood or incongruous or conflict with normal traffic in the vicinity.
8. Vehicular and pedestrian traffic volumes and patterns, particularly of children, as well as vehicular turning movements in relation to traffic flows, intersections and site distances.
9. The physical characteristics of the site such as: area, drainage, topography, open space, landscaping, and access to minor and/or major streets.
10. Demands upon public services such as electricity, sewer, water, police, and fire protection, schools and refuse disposal.
11. The type and amount of litter, waste, noise, dust, traffic, fumes, glare and vibration which may be generated by such use.
12. Area requirements for the proposed use and the potential for the use or its area requirements to expand.
13. Other factors necessary to maintain property values in the neighborhood and guarantee safety, light, air and privacy to the principal uses in the district.
14. Compliance with the Master Plan.

Marquette City Zoning Ordinance, Sec. 80.60

SECTION 7: BYLAWS, RULES OF ORDER, AND REPORTS

The MPEA in Sec.19, requires the Planning Commission to adopt bylaws and make annual reports to the Township Board:

(1) A planning commission shall adopt bylaws for the transaction of business, and shall keep a public record of its resolutions, transactions, findings, and determinations.

(2) A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.

The MZEA states that the Zoning Board of Appeals may adopt rules to govern its procedures ec. 603 (1)]. Section 604 (2) states “as prescribed by the zoning board of appeals, by general rule”.

The Planning and Zoning Center at MSU has interpreted this to require the rules of the board be adopted in writing to assure consistency. The ZBA must also submit an annual report to the local unit's legislative body.

Few local planning commissions and zoning boards of appeals have bona fide bylaws or rules of order. Many have "rules" included in a chapter addressing variances, special or conditional use approvals or notifications. Others include "rules" in chapters devoted to Zoning Officials, Zoning Boards of Appeals, and/or Planning Commissions. These "rules" tend to be a restatement of statutory requirements.

Commissions and boards adopt bylaws for the regulation of their own members and conduct of their internal affairs. The order of agenda items, and presentation for public hearings, are rules generally addressed within bylaws. The more zoning activity within a unit of government, the greater the need for bylaws. They create consistency and contribute to efficiency. Observing the bylaws can add to the professional stature of the Board or Commission.

Bylaws are short –usually 3 to 6 pages. They are relatively easy to adopt and change. Draft language is presented at a meeting. Notice is given at that meeting and extended to any absent member along with the proposed language distributed for consideration. At the next meeting, the language can be modified, if necessary, and adopted.

A number of local units have their rules of order or bylaws in their ordinances, making it cumbersome to change. In Ely Township, the Township Board adopted bylaws for the Zoning Board of Appeals.

In Humboldt and in Forsyth Townships the Zoning Administrators prepare a combined report of zoning, planning and zoning board activities for the year. Negaunee City's ZBA submits a report; The zoning boards of appeal in Ely, Richmond, and Skandia do not submit reports.

See Table 1 and 2, pages A-1 and A-2, for profiles of these and other local boards. Content of annual reports were not reviewed.

Bylaws should:**Identify**

- Board / Commission
- Enabling legislation,
- Date of establishment,
- Physical jurisdiction,
- Membership (#, alternates & representation)
- Quorum(s),
- Conflict of interest

Contain

- A mission statement,
- suspension of by laws
- Rules of order (i.e., Roberts' by reference)
- List officers & elections

List

- Responsibilities
- Residency requirements,
- Terms of tenure,
- Term limits (if any)
- Meeting times and dates, and place
- Mandatory meetings

State policies regarding

- Application deadlines,
- Special meetings,
- Public hearings,
- Limiting comments
- Absences
- Order of business (agenda)

SECTION 8: ORDINANCE REQUIREMENTS

There are a number of requirements established by MZEA. These requirements must be met, but some are not required to be detailed in the ordinance. Other zoning tools are optional, but have specific requirements if the local unit chooses to incorporate those options into their ordinance. General references in sections related to duties and/ or procedures are sufficient and could reduce the need for amending the ordinance if the enabling legislation is amended. For example, an ordinance might state that it is the responsibility of the Zoning Administrator to provide notice of all public hearings in accordance to Sec. 125.3105 of Act 110 of 2006 as amended. Other requirements may appear in bylaws.

MZEA contains requirements regarding:

- Planning Commission: memberships, representation, bylaws
- Zoning Board of Appeals: memberships, representation, bylaws
- Public Hearings
- Notification & publication
- Incorporation of Airport Zoning Plan
- Instruction on craft or fine arts as a home occupation
- Prohibition of regulating oil or gas wells
- Prohibition of the total prohibition of any land use
- Special land use decisions, regulations, standards, and approvals
- Open Space Preservation
- Site Plans & Reviews
- Procedures and Standards

This section will review local compliance with mandates and options that have not been addressed in previous chapters. See also Table 4, page A-4.

OPERATIONAL REQUIREMENTS

Required Public Hearings

Zoning boards of appeals must hold public hearings on variances and requests for interpretation. Planning commissions must hold public hearings for adoption of the initial ordinance and for amendments of the text and maps. Other items that come before the planning commission, such as class a nonconforming uses, conditional use permits and special exceptions require public hearings only if granting them is based upon discretionary decisions.

All participants should present a businesslike manner during a public hearing. Bylaws should address public hearing procedures. A written copy of the procedures should be available at every meeting, to assist the chairperson in his duty of running the meeting. Chairmen should use them at every meeting to keep all actions consistent, fair and impartial. Reading the rules prior to the hearing is recommended.

Public hearings held by the legislative body are optional, unless required by the ordinance itself, by charter, or by a request sent by certified mail of an interested party. However, when a

legislative body does hold a public hearing, notice must be given as specified in the Act, including mailed notices. The only exception is when an individual requests a hearing. Only that individual must be notified regarding the meeting at which they may address the legislative body.

LEGAL NOTIFICATIONS

Public Hearing Notification Contents

It is relatively easy to overlook some of the required information in a legal notice (published or mailed). Both the mailed and published notices should be carefully checked for content and correct information including dates.

A legal notice must include:

- Type or nature of the petition
- Identification of the site (all street addresses); if no street address other means should be used such as a tax id number, subdivision & lot, etc.
- When: hearing date and time
- Hearing location: street address.
- When and where written comments will be received.

Although the act does not require it, consideration should be given to including a contact name and phone number, for persons who may need to request accommodation to participate. Also recommended is to include when and where petition and related materials can be reviewed.

Public Hearing Mailed Notices

These requirements are now uniform for all units of government and for all zoning-related hearings. They vary significantly from previous requirements. They apply to zoning issues before planning commissions, zoning boards of appeals and legislative bodies. MZEA specifies notification requirements in Section 301.

Legal notices must be given:

- by personal delivery or US Mail
- at least 15 full days prior to the hearing.
- to all property owners within 300 feet of a site
 - including parcels in another local unit
 - as shown on the tax roll.
- to occupants of structures with 1, 2, 3 and 4 units or spatial areas within 300 feet of the site (this includes office and business sites. The term “occupant” may be used if a name is not known.
- A request must be made for owners or managers of structures with five or more units to post a copy of the notice at the primary entry to the structure.
- Notice is considered given when personally delivered or deposited with the postal service or other public or private delivery service during normal business hours.

MAILED NOTICES ARE NOT REQUIRED FOR TEXT AMENDMENTS OR FOR MAP AMENDMENTS INVOLVING MORE THAN 10 PARCELS, PROVIDED THE PARCELS ARE CONTIGUOUS.

The legislative body also must:

- comply with notice requirements, except when
- they do not normally require a second public hearing prior to adopting or amending the ordinance or text, but they receive a formal request from an individual, only that individual receives notice.

There is no requirement that legal notice procedures be listed in an ordinance. However, it is customary to have them in the ordinance or in bylaws for both the planning commission and the zoning board or appeals. The review of local ordinances shows that more than one third of them do not comply with the mailed notification requirements. Others do not comply with the published notice requirement. Part of this problem is due to the old requirements having been restated in multiple sections of the ordinance. One or two sections were amended with the new requirements, but others were overlooked.

Several townships did not include notices to owners or managers of buildings with more than 4 dwelling units or spatial areas. This requirement includes businesses occupying leased area in commercial buildings. This may be due to lack of such structures. This language should be included in the notification requirements for the cities and for other units with urbanized areas.

Many local units did not include language regarding map amendments applicable to 11 or more parcels. These parcels must be contiguous. If not, mailed notices are required.

A single section should address all public hearings, preferably in an administrative procedures section. This would make using the ordinance more citizen/user-friendly. Having them in the bylaws would make amending them easier.

Lastly, only a few local units utilize an affidavit of mailing. An affidavit is not a requirement. However an affidavit can be helpful, especially if questions arise several years after a hearing. It is filed with a map of the notification area, a list of owners of record within the area, their address and parcel numbers, a copy of the mailed notice and the published notice. The individual depositing or giving the notices to the US Postal Service (or other delivery service) fills in the date and time and signs the form. The deposit must occur during normal business hours at least 15 full days prior to the hearing.

Public Hearing Published Notices

All units appear to use the Mining Journal for published notices. Most notices appear as display ads. Units may use the legal notice section of the classified ads. The City of Marquette uses the classified ads. They are less noticeable and have smaller type, than a display ad. Classified ads are also less expensive. They may require less lead-time, particularly if they are submitted electronically. The publisher signs and mails a notarized affidavit of publication at no additional cost. For major hearings, such as a new ordinance, display ads remain an option.

Notices of Adoption or Amendment

Most local ordinances do not mention the publication of adoption or amendment to an ordinance and map. Technically this is a requirement of the legislative body. It is recommended that a reminder of this requirement be included in the letter transmitting a proposed amendment. The legislative body must publish a notice of adoption for text and map amendments within 15 days of that action. The ordinance does not become effective until 7 days after adoption or a later date as specified in the motion of adoption, or as set by charter.

The Resource Management/Development Department staff regularly reviews legal notices published in the Mining Journal. However, mailed notices are rarely submitted as part of the County Planning Commission's review of ordinance and map amendments. Nor is there any follow-up review of published notices of adoption.

Contents of the adoption notice should include:

- Function of the ordinance (regulating development and land use for a complete ordinance or a summary of regulatory effects and/or location of a map amendment)
- Place and time when the amendment can be viewed or purchased, and
- The effective date.

In addition, notice must be sent to the airport manager if the ordinance is applicable within the airport plan area.

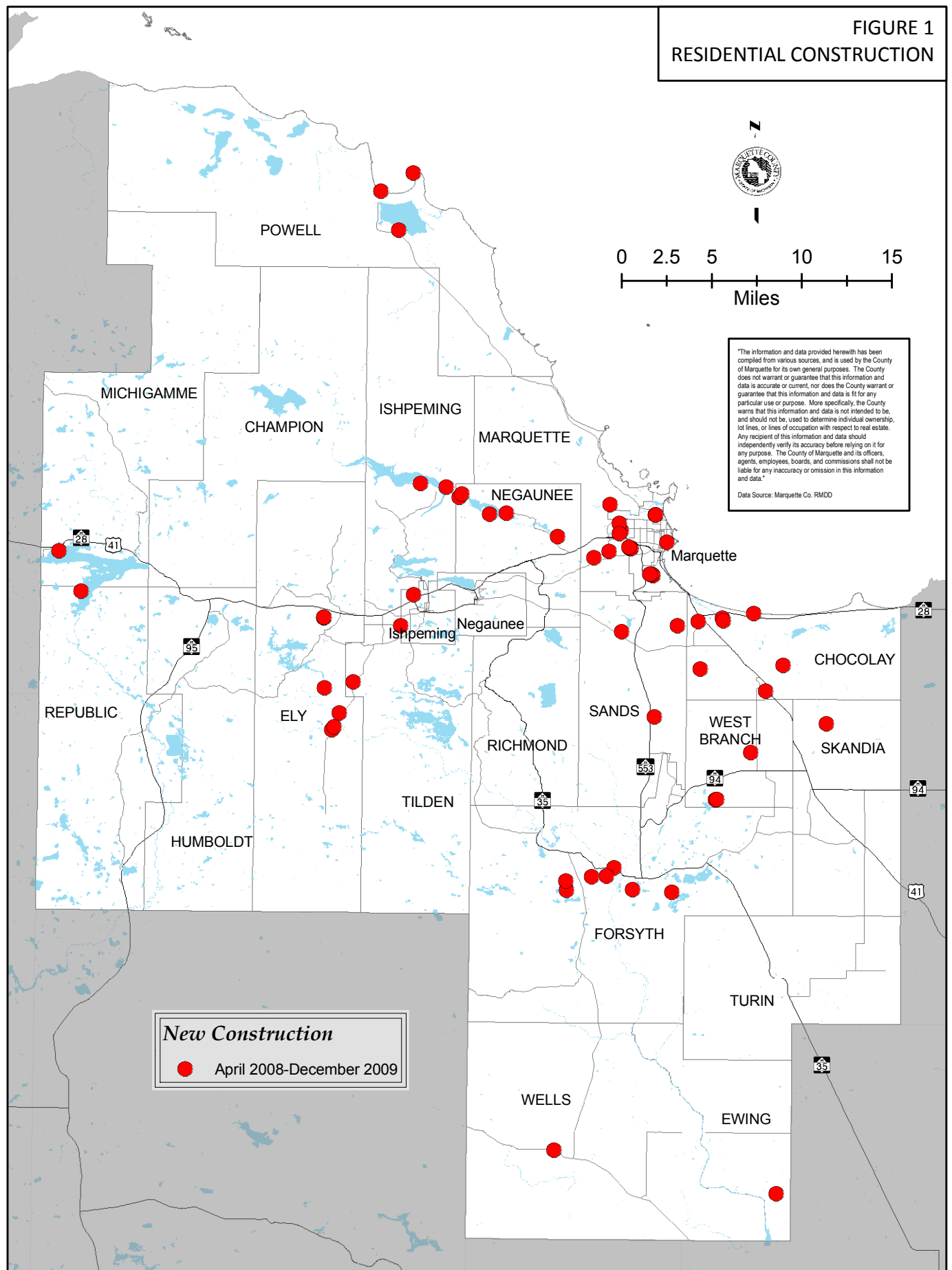
CONSISTENCY WITH PLANS AND ZONING OF OTHER GOVERNMENTAL UNITS

The main purpose of zoning is to improve the health, safety, and welfare of the population and to direct land use towards implementation of the master plan (and any stand-alone segments thereof). Decision makers often overlook the long-term effects of zoning. Other, immediate, factors tend to have more weight than goals and policies. A prime example is extensive zoning for seasonal and year round dwelling units in remote areas and along water bodies for the purpose of increasing the tax base. The increased cost of providing services does not receive close scrutiny. See Figure 1 for remote development locations.

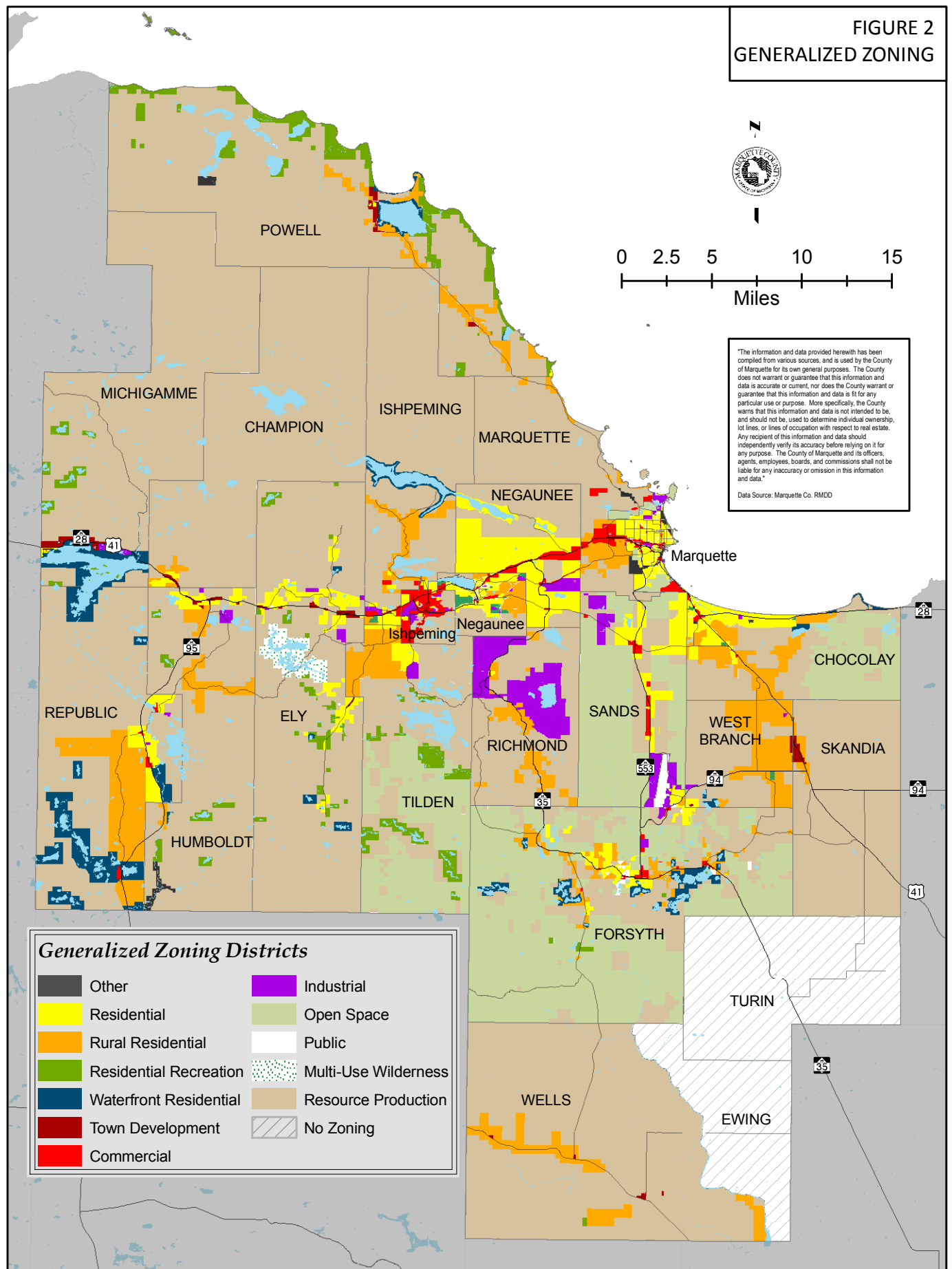
Figure 2 shows generalized zoning within the County. Within Marquette County, there has been little direct conflict between the zones abutting township lines. There are resource and industrial zones that abut zones with residential development. They are the result of early mining activity and company housing. There are several areas where small lot residential abuts open space, resource production, or commercial zones. These zones are generally resource-oriented, with large parcel sizes. With larger parcel sizes and increased setback requirements, development could be located away from the adjacent non-residential property.

In one instance, over 20 years ago, there was an issue with two adjacent medium-sized, rural residential zones. One township allowed stables, and the other did not. A second situation occurred in 2004 when a proposed development in Sands Township would have connected Silver Creek Road to M-553 and exacerbated traffic problems in Chocolay Township at the intersection of Silver Creek Road and US-41 / M-28. The County expressed concern over a scrap metal recycler locating in the vicinity of a long-term care facility.

**FIGURE 1
RESIDENTIAL CONSTRUCTION**



**FIGURE 2
GENERALIZED ZONING**

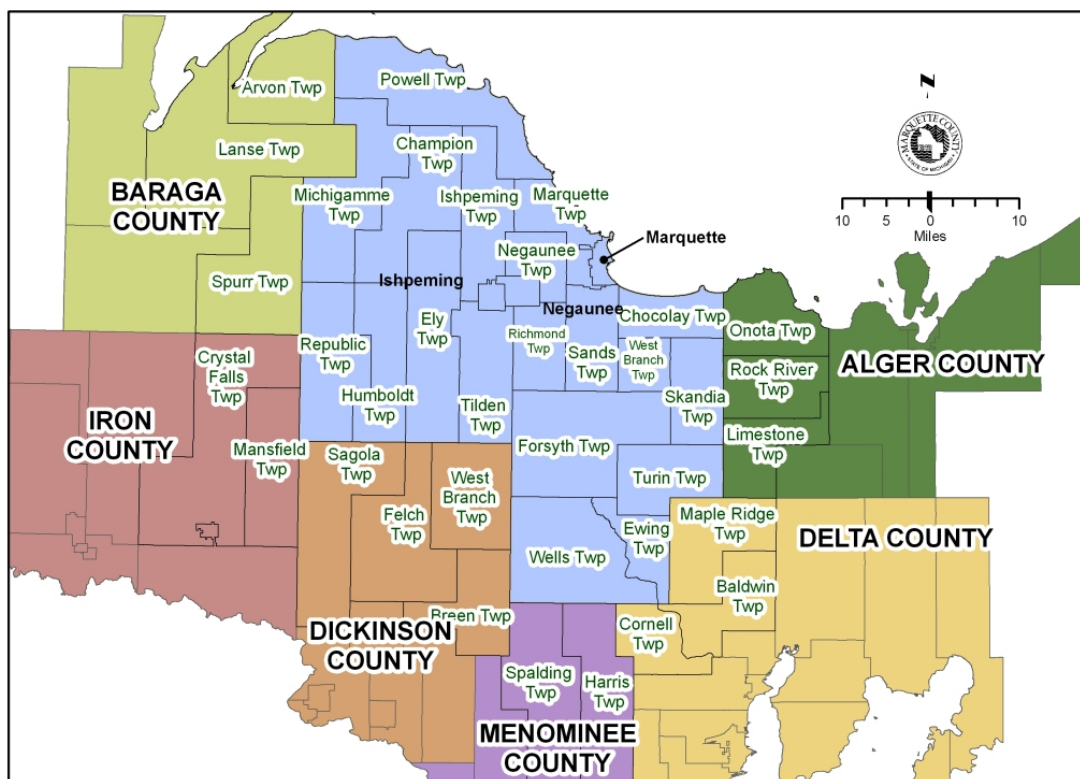


Part-time zoning administrators and/or assessors often work for several local units. Other examples of collaboration between local governmental units include shared fire departments, first responders, and recreational sites as well as mutual aid agreements. Zoning in one township could increase the impact upon these shared services. Of particular concern are remote areas with high fire risk, poor roads, and/or limited water supplies zoned for seasonal or year-round residential development.

The proposed access road to the remote Kennecott mining site on the Yellow Dog Plains will traverse portions of Humboldt, Champion, Ely, and Michigamme Townships. This will be an all-season road, suitable for heavy trucks and equipment. It will generate requests to rezone areas for year-round development. If one unit creates a residential area, additional pressure will be placed on the other townships. Such zoning would further burden already taxed township services. This zoning increases the urban/wildland interface. It increases the risk for, and potential damage from, wildfires. At the same time, it would increase the difficulty in providing fire fighting and other emergency and routine services.

Marquette County shares boundaries with six other counties and 17 townships. Twelve townships within Marquette County share a common boundary with up to three other counties and up to 5 townships outside of Marquette County. See Figure 3, Abutting Units of Government.

Figure 3, Abutting Units of Government



The Marquette County Planning Commission reviews text and map amendments as well as plans prepared by Township Planning Commissions. See Table 5, Local Plan and Zoning Reviews, page A-5. A quick inventory of one of the units (with considerable zoning activity) showed a 67% rate of concurrence with the local planning commission's recommendation. A brief review was also made of several proposed amendments to zoning text and maps where the township planning commission's recommendation was not supported by the Marquette County Planning Commission. The MCPC transmittals included the following reasons for non-support:

- Existing and proposed cul-de-sacs within a high fire risk area and the inefficiency of providing government services to dead-end locations
- Lack of sufficient information to estimate total build-out of the area to be rezoned.
- Proposed residential zoning requires access along 3 to 5 miles of private roadway
- Soils in the area are unsuitable for septic systems
- Proposed rezoning would result in parcels divided into multiple zoning districts
- Proposed rezoning is not consistent with the Township's Comprehensive Plan
- Distance to existing utilities
- Local plan calls for curtaining sprawl; requested rezoning is beyond the identified development core
- Steep slopes make development unsuitable
- Proposed area is within a dam breach inundation zone
- Inconsistency with the County Comprehensive Plan and Hazard Mitigation Plan
- Requested zoning district was chosen to resolve an illegal lot split
- Spot zoning
- Poor soils and wetlands

STATE MANDATED USES

(See Table 4, Ordinance and Administration Profiles, page A-4, for status of individual Townships regarding the following ordinance requirements)

Instruction in Craft or Fine Art

Sec. 204 of Act 110 specifies that any occupant of a single-family residence may give instruction in a craft or fine art within the residence as a home occupation. The local unit still may enforce regulations regarding noise, advertising, traffic, hours of operation, etc., however the act does not address whether local unit can require a special use (aka conditional use) permit. The City of Ishpeming includes these uses as a conditional use with the following language. *"Instruction in a craft or fine art in a single family residence, subject to the conditions outlined in M.C.L.A. §125.3204"*. Most other units do not specifically list instruction in craft or fine art. It is assumed this activity falls within the home occupation conditional use.

State Licensed Residential Facilities

With the exception of adult foster care residential facilities associated with correctional institutions, all state licensed residential facilities must be treated as a permitted use in all residential zones. They are not subject to hearings or procedures different from a typical residential structure within the district. Most local ordinances comply with this requirement. The City of Ishpeming lists adult foster care homes as a conditional use.

Child Care Homes (Family and Group Day Care)

The state mandates that any residence can be used as a family day care home in any zone that allows residential use. In-home family child care (6 or fewer children) is considered a typical accessory of residential use. The use does not require any additional zoning approval. The local unit must issue a special use permit, conditional use permit or other similar permit for a group child care home (7-12 children) if the site meets location, fencing, operational and appearance requirements listed in Act 110, Sec. 206 (4). If the site does not meet the requirements listed in the act, issuance of a permit is at the option of the local unit.

Michigamme Township defines child care homes as licensed by the state, but does not indicate they are a customary accessory use of residential use. It lists them as a principal use only in the Town Development 1 & 2 zones. The TD-1 zone permits residences, but not the TD-2 zone.

Forsyth Township still lists family child care as a conditional use in the R-1, R-2, MH-1, MH-2 (with mobile home park manager's written approval), LR and the RR-2 zones. Family child care homes are a permitted (principal) use in the R-3 zone. Group day care homes are also conditional in all but the LR zone.

NON-JURISDICTIONAL USES

As under previous enabling legislation, local units do not have jurisdiction to regulate electric transmission lines, and oil & gas wells. They cannot totally prohibit undesirable but legal land uses. The City of Ishpeming Ordinance states as a footnote to their schedule of regulations *"Permanent storage and/or disposal of nuclear wastes is strictly prohibited"* and *"Electric generating facilities using coal-fired steam or nuclear fuels shall not be constructed without the express consent of the City Council"*.

OPEN SPACE PRESERVATION

This would allow a developer to set aside up to half of a site as permanently protected open space. The space could be restricted to the sole use of the development's residents, or it could be open to the public usage. Some local units have adopted PUD zones which provide compliance with this mandate. Others are exempt based upon their population. Eight units should provide options for cluster development to bring their ordinance into compliance. See Table 6, Cluster Zoning; page A-6 for the status of local units.

SPECIAL REGULATIONS – OVERLAY ZONES

Section 125.3201 calls for uniform regulations within a zoning district, with an exception in subsection 3. Subsection 3 reads *"A local unit of government may provide under the zoning ordinance for the regulations of land development and the establishment of districts which apply to only land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion"*. These areas are typically referred to as overlay zones. Following are potential overlay zones which should be considered by local planning commissions.

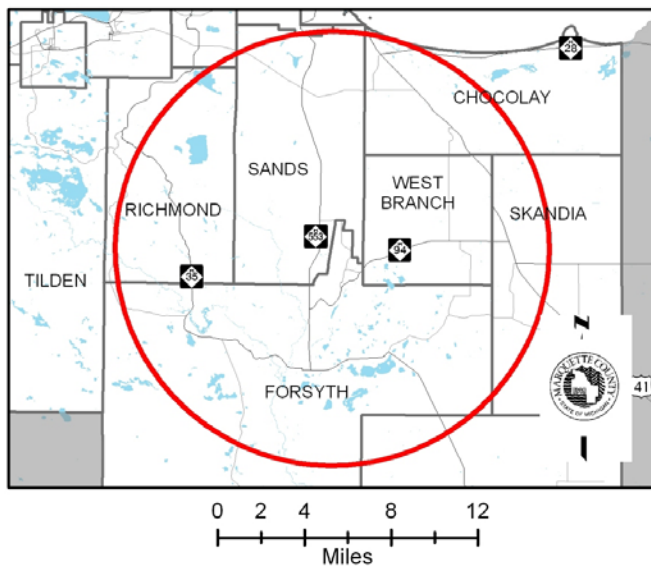
Airport Zoning

This zone would apply to seven of the townships in Marquette County. Michigan's Public act 23 of 1950, the Airport Zoning Act, applies to publicly owned airports. Its objective is to provide aviation safety and protection to users of the airport as well as individuals who live and work in its vicinity. The act defines projections (primarily trees and buildings) into airspace surrounding the landing area as a hazard and public nuisance. Within this Airport Hazard Area limitations are based upon the elevations above mean sea level at the ends of the airport runways, the established elevation of the airport and the airport reference point. In addition, lighting, radio communication and some land uses (particularly those that create smoke or vapor or attract birds) are also restricted. A permit is required before any new use is established or any structure is built or modified. These airport zoning permits are in addition to any zoning permit required by a local unit. Additional FAA regulations may also apply.

If a local unit of government adopts or revised a plan required under Section 203 (1) of the new zoning enabling act, after a copy of the airport layout plan or airport approach plan has been filed with the local unit, they must incorporate the airport plan into their local plan. Ordinances adopted prior to March 28, 2001 do not have to comply with the airport plan. Amendments and variances granted after that date cannot allow any increase in inconsistency with the airport plan.

In 2000, the County Board adopted a new Airport Zoning Ordinance for K.I. Sawyer International Airport, revoking a 1966 ordinance focused initially at the former County Airport in Negaunee Township. For KIS Airport, the zone is a ten-mile radius from the intersection point of the centerlines of the existing runway and the proposed crosswind runway. This zone consists of four concentric sub-zones. See Figure 4, Sawyer International Airport Zoning.

Figure 4, Sawyer International Airport Zoning



The Resource Management/Development Department is the zoning administrator. The department's Building Code Division, in consultation with the Senior Planner, issues an average of 160 airport zoning permits annually. The Sawyer International Airport Zoning Board of Appeals reviews appeals. This board consists of five members. An annual meeting is mandatory. It has not received any petitions, and has not held any additional meetings.

It is recommended that local units create an overlay zone to demark the airport zone. This will inform the public of its existence and encourage consideration of the development limitations enforced by the Airport Zoning Board in formulating their plans.

High Risk Erosion Zones

The Shorelands Protection and Management Act, (P.A. 245 of 1970), charges the Michigan Department of Natural Resources and Environment (MDNRE) to designate high risk erosion zones wherever the historical shoreline recession averages 1 foot or more per year. These erosion rates are periodically updated. Construction in these zoned requires a permit from the DNRE or through local zoning if approved by the Department. (Other state permits such as those required for critical dune areas, wetlands or shore protection may still be necessary from the Department.) The Department then monitors the performance of the community and provides technical assistance. The program provides approximately 30 years of protection for structures. It reduces disaster assistance costs, enhances public awareness and saves natural resources. Within Marquette County, four local units have Lake Superior shoreline. See Figure 5, High Risk Erosion Areas.

Powell Township

There are ten high risk areas in this township. Boundaries are described by legal description of the end points along the shore. The distance from the shore is based upon the rate of erosion. The zones extend from the ordinary high water mark to the minimum recommended setback. The language also states that the minimum landward setback shall be measured landward from the bluff line and shall be construed as running parallel to the bluff line. In the event the bluff line recedes (moves landward) the setback line shall also be construed as to have moved landward a distance equal to the bluff line recession. Minimum recommended setbacks for principal structures vary from 40 feet to 70 feet. No permanent construction is allowed in the zone. Accessory structures that move easily may be placed within the high-risk zone. To the fullest extend practical, permitted accessory structures are to be removed prior to sustaining erosion damage.

Marquette Township

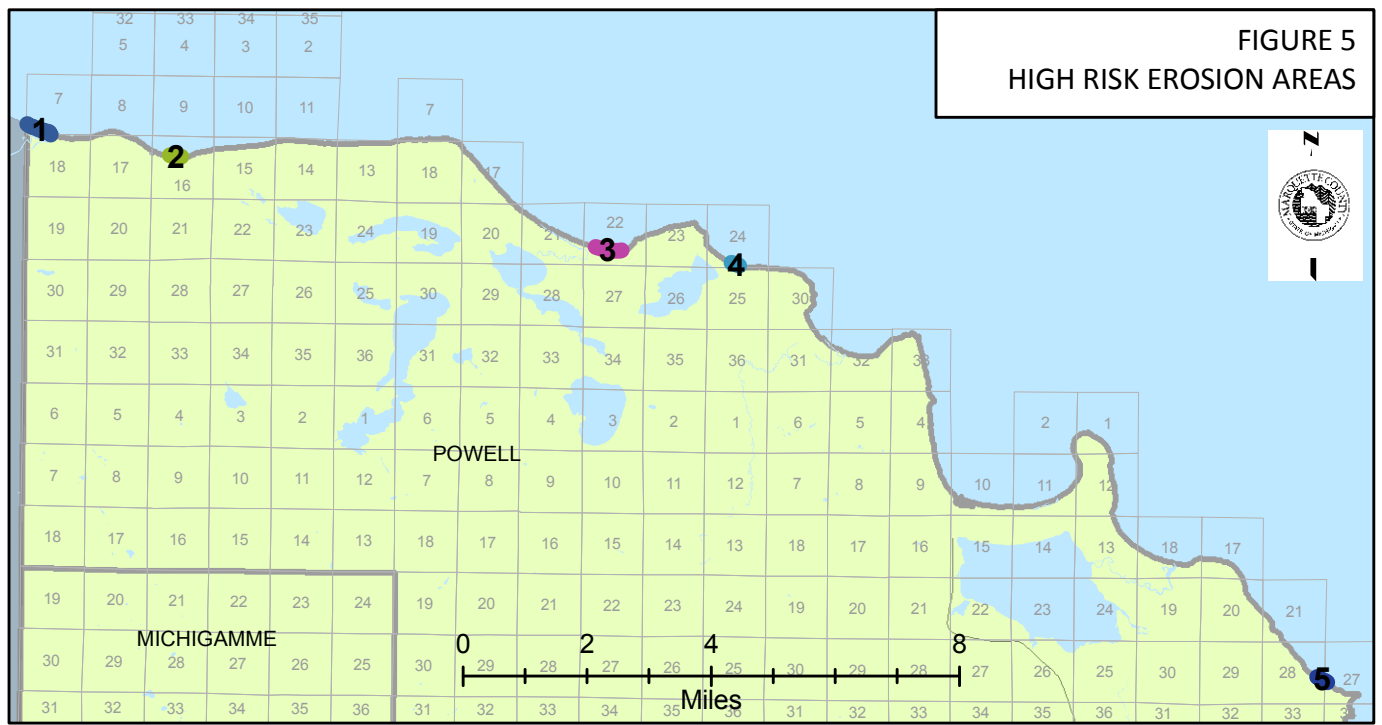
Marquette Township does not have any high risk erosion areas.

City of Marquette

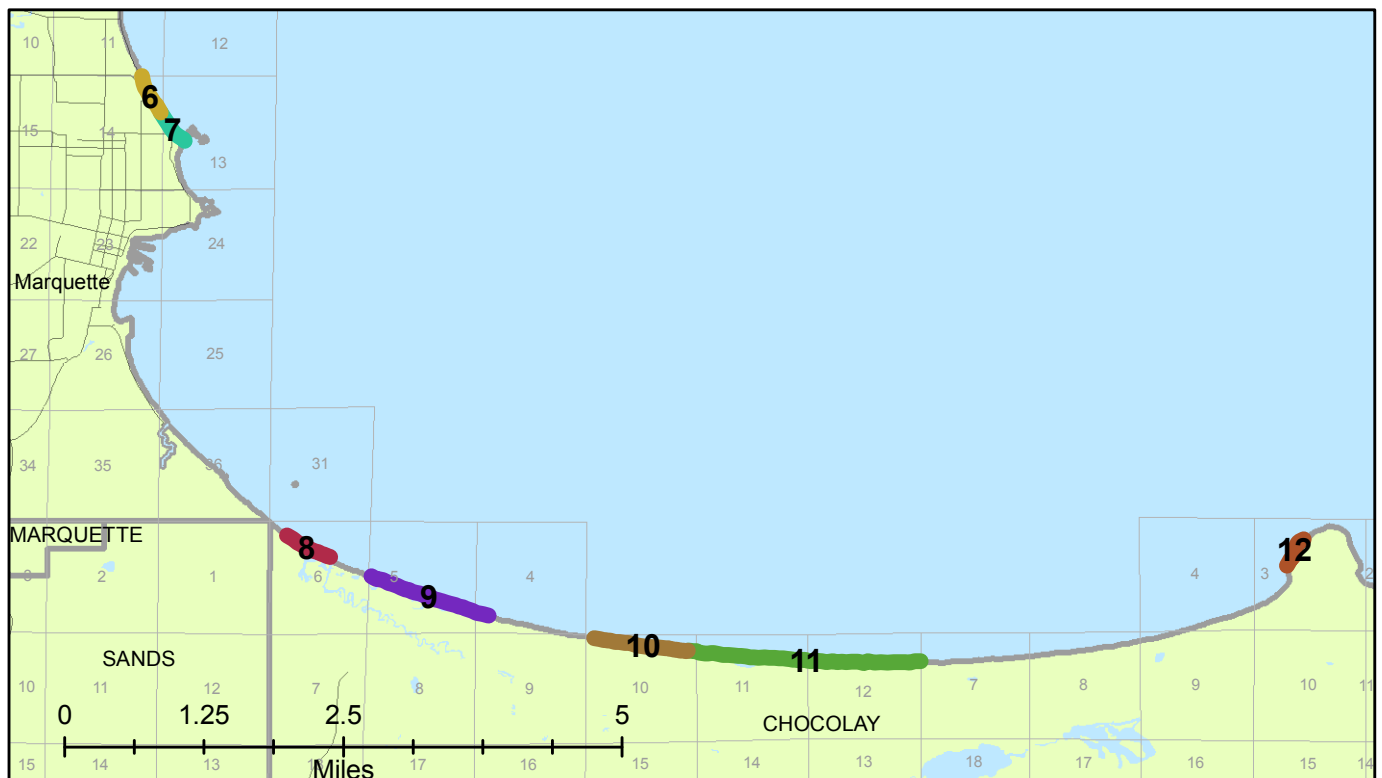
There are two high risk erosion areas within the city. By definition, the setback is measured between the bluff line and the most lake-ward edge of a permanent structure, as measured on the date that the construction begins. The minimum setbacks listed in the zoning ordinance are 130 and 180 feet, with minimum recommended setbacks being 145 and 195 feet. However, the updated DNRE map, shows the 60 year recession distances to be 245 and 324 feet.

Chocolay Township

There are five high risk erosion areas. Developers must show the boundaries on site plans. However, the DNRE remains responsible for issuing permits required under the Shorelands Protection and Management Act. The thirty year projected recession distance (minimum setback) ranges from 50 to 70 feet. The sixty year projected recession distance ranges from 85 to 130 feet.



PROJECTED RECESSION DISTANCE			PROJECTED RECESSION DISTANCE		
MAP ID	60 YEAR	30 YEAR	MAP ID	60 YEAR	30 YEAR
1	90	45	7	345	180
2	80	40	8	115	65
3	60	30	9	95	55
4	70	35	10	125	70
5	95	55	11	85	50
6	245	130	12	130	60



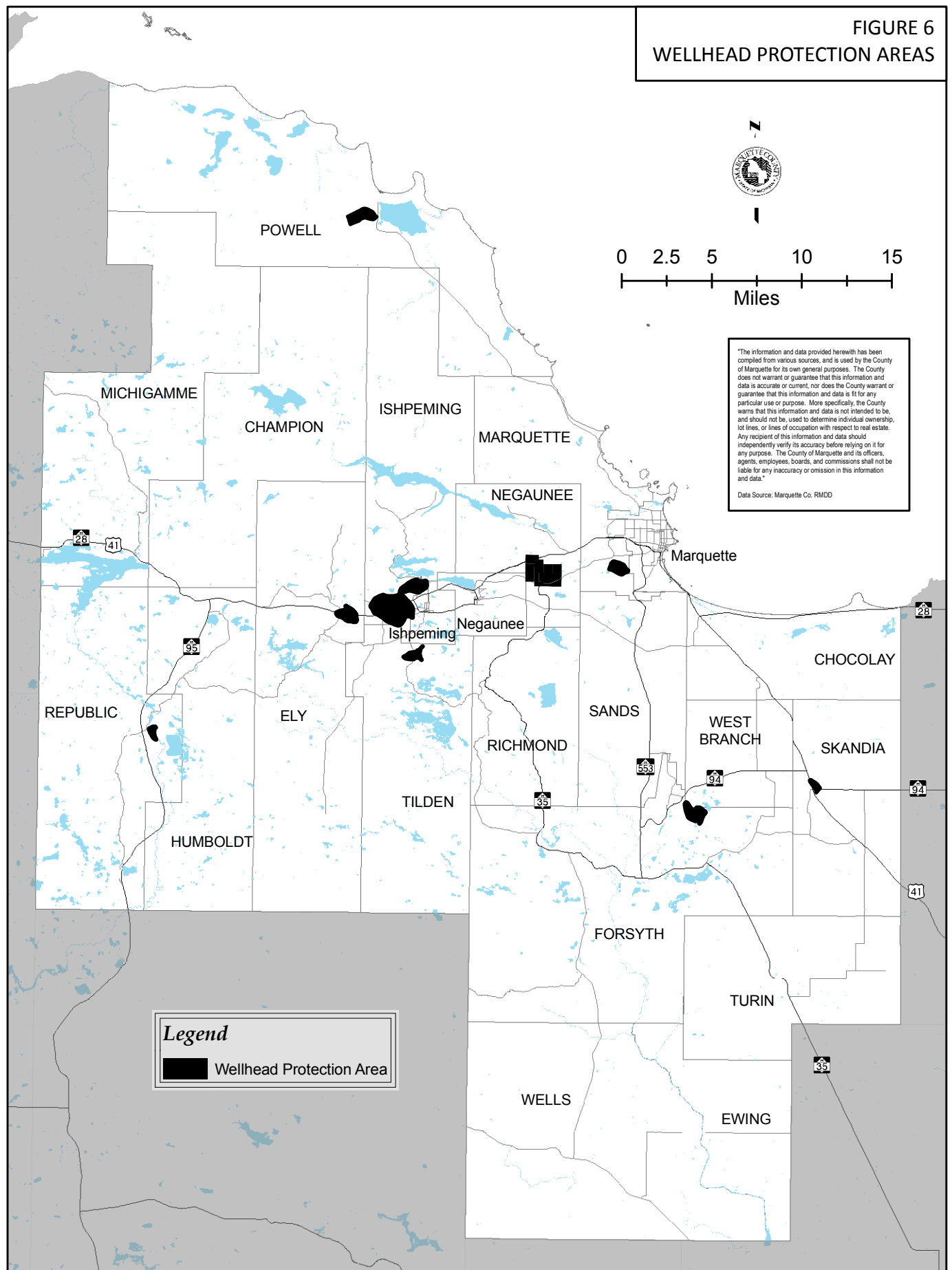
Wellhead Protection

Often contamination or failure of existing individual supply sources makes it necessary to establish community water supply system for health reasons. Frequently alternative water sources are limited. Water systems are costly. Six units of government have incorporated wellhead protection areas into their zoning ordinances. Overlay zones generally identify these areas. Sands Township has a separate ordinance. See Figure 6, Wellhead Protection Areas.

Powell Township addresses wellhead protection as a footnote to the Height, Bulk, and Placement Regulations (Section 401 of Article IV General Regulations. The footnote is not assigned to any of the regulations in the table. It reads: *(P): Wellhead protection Zone and Wellhead Protection Area: All zoning districts within a one-thousand (1,000) foot radius of the township municipal water supply and within the township's delineated Wellhead Protection Area are restricted to Residential, Rural Residential, and timber Production districts in order to provide maximum protection against ground water contamination. All liquid above-ground petroleum and chemical storage tanks within this zone shall be placed above ground level with a concrete catch basin with a minimum three (3) inch lip around its base to collect any leakage from the storage tank. This is to include mobile home heating oil tanks gasoline storage tanks, and any other tanks containing possible pollutants to the groundwater system.*

The City of Ishpeming Ordinance identifies Lake Sally, Lake Ogden, Lake Angeline, Cedar Lake, Miller Lake, and Tilden Lake as sources for its water supply. Only selective timber harvesting is permitted in the Lake Sally Watershed. General language prohibits activities & operations that could damage the water supply or reduce it. An allowance is included for construction of a dam for the Lake Sally reservoir.

FIGURE 6
WELLHEAD PROTECTION AREAS



Negaunee Township’s ordinance states the goal of protecting the entire aquifer as well as the immediate area of the wellhead. It sets up three tiers: The Critical Impact Zone, the Potential Threat Zone and the Potential Impact Zone. In these zones, all users must connect to the public waste water system if it is available when their septic system fails. Use of hazardous materials is limited in these zones. Within the tiers, site plans require additional information.

Other Overlay Districts

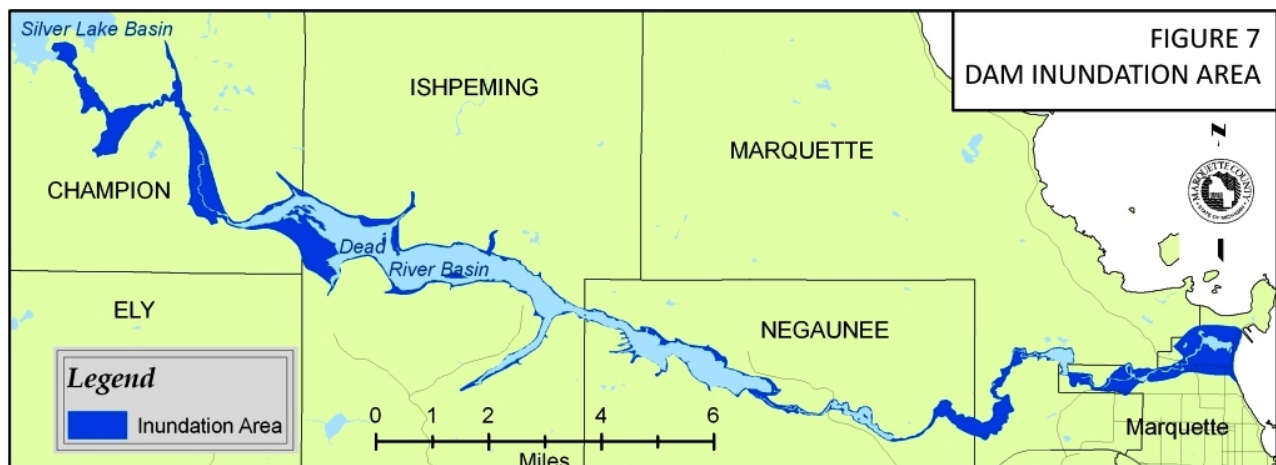
Chocolay Township also has adopted regulations to protect the dunes along the shoreline. This overlay zone extends the entire shoreline of the township with the exception of the rocky area of Shot Point. Other overlay zones adopted by the township include access control along US-41 and snowmobile trails.

Although the access control, snowmobile trail, high risk erosion and dune zones have been created, they are not shown on the official zoning map of Chocolay Township. Apparently a separate “overlay” map exists but is not on the Township’s website. The current City of Marquette’s map does not include its high risk erosion zone. The Powell Township map is currently being revised and will contain this information.

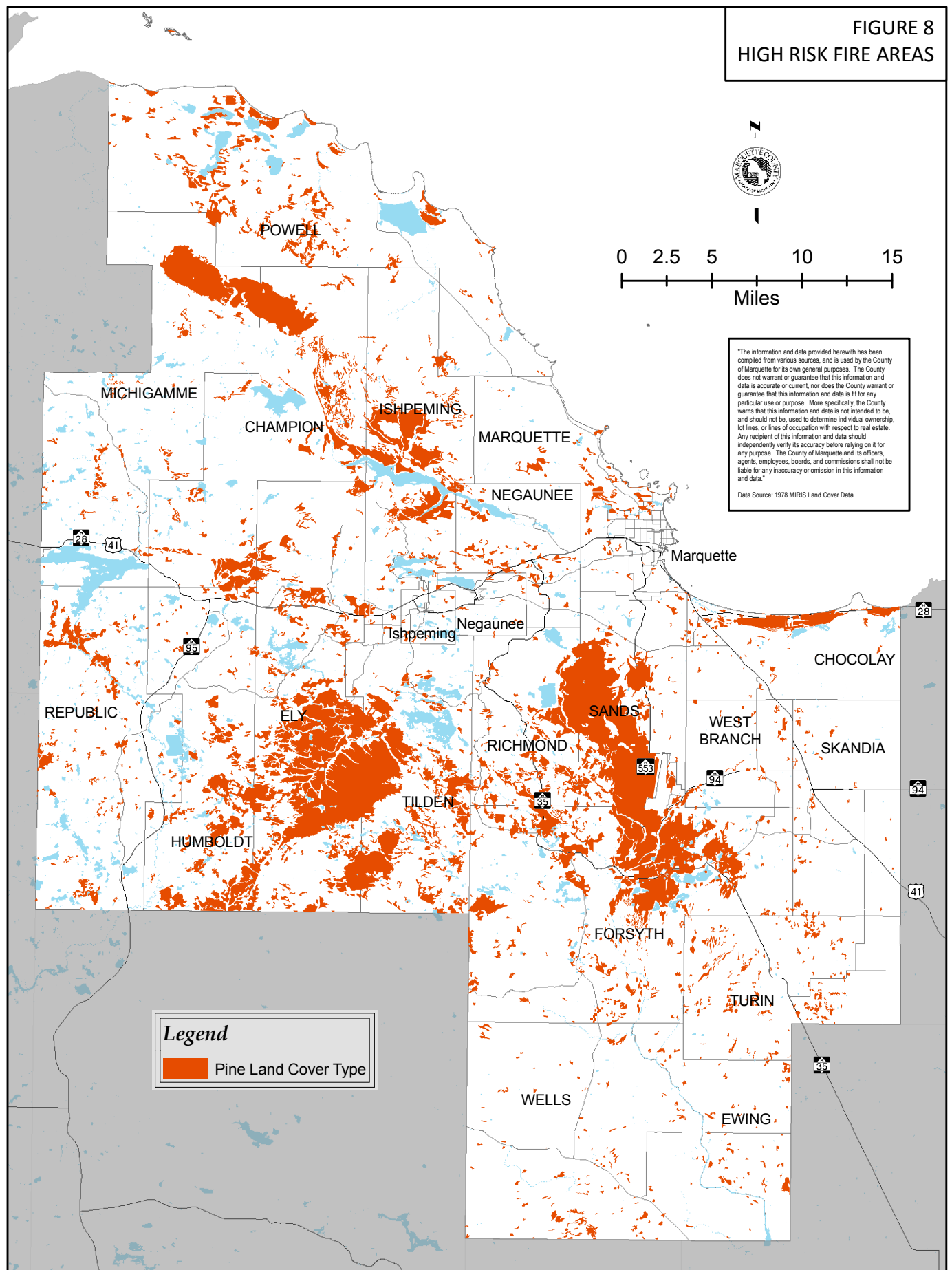
Potential uses of overlay zones include:

- dam inundations footprints (see Figure 7)
- high fire risk areas, (See Figure 8) (*adoption of FireWise requirements for access, design and maintenance of a defensible area around structures*)
- extreme slopes, (regulations for engineering, storm water management, erosion control and access)
- caving grounds (fencing and signing requirements)
- wild or scenic rivers (emphasis on preservation & compliance)
- historic district , (preservation restrictions)
- access management (number, spacing and design of driveways)
- Flood prone areas (See Figure 9)

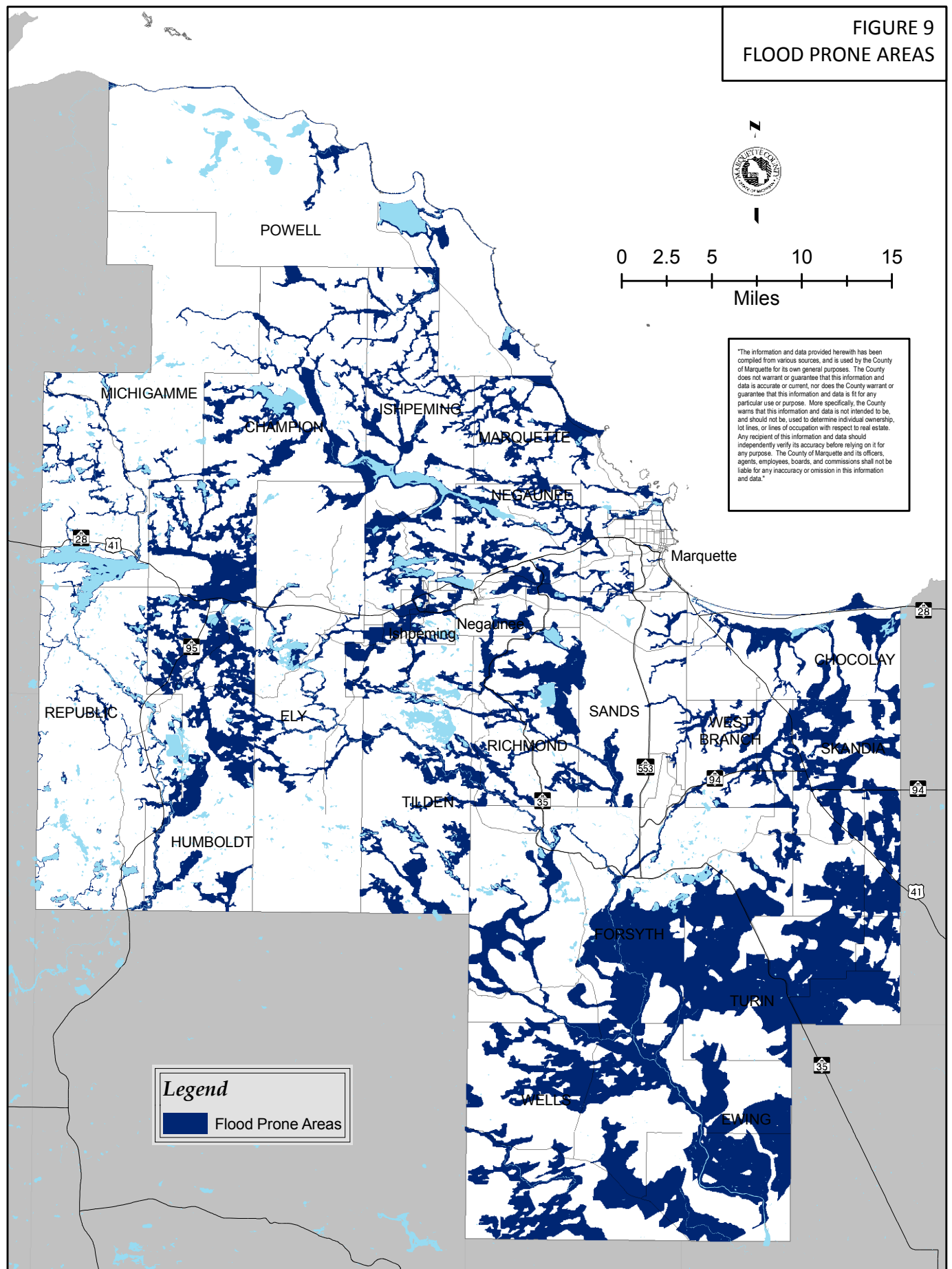
Figure 7 Dam Inundation Area



**FIGURE 8
HIGH RISK FIRE AREAS**



**FIGURE 9
FLOOD PRONE AREAS**



OPTIONAL CHANGES

One major change in the enabling legislations is the lifting of a long-standing restriction how amendments to the ordinance are made. The illegality of contract zoning has been entrenched in case law for decades. Another is a tool for preservation of unique properties for the benefit of the public. It has been in existence for forty years but has received limited use at the local level. MZEA now sanctions the purchase of development rights, and outlines funding mechanisms for local units. Implementation of both of these changes is at the local unit's option.

Conditional Zoning

Traditionally rezoning petitions left local planning commissions and legislative bodies between choosing "any of the above permitted uses" or "none of the above". When a proposed use is compatible with the characteristics of the land and neighborhood, but other uses are not, the dilemma becomes a matter of trusting the petitioner (and subsequent unknown property owners) or rejecting the proposal. The Michigan Supreme Courts had declared the zoning enabling acts did not specifically allow local units to enter into that type of contract.

Section 405(1) of Act 110 now allows an owner of land to offer, voluntarily and in writing, and the local unit to approve, a proposed use and development of a property as a condition to rezoning that property. It further specifies that the local government cannot require a landowner to offer conditions as a requirement for rezoning, nor shall the local unit add to or alter the conditions during a time period specified by the Town Board for satisfying the conditions.

Only Marquette and Sands Townships have added conditional rezoning language to their ordinances. The Marquette Township Ordinance reads:

"SECTION 11.03: PLANNING COMMISSION REVIEW

The Planning Commission, after public hearing and consideration of the factors for re-zoning set forth in this Ordinance, Article XXIV, Changes and Amendments, Section 24.06, Fact Finding, may recommend approval, approval with recommended changes or denial of the re-zoning provided, however, that any recommended changes to the Offer of Conditions are acceptable too and thereafter offered by the owner". Act 110 specifically states that the petitioner, not the local unit, initiates the offer.

Sands Township ordinance contains similar language. However, it allows the voluntary offering of conditions at any time during the rezoning process. The conditions may not include a request for uses not permitted in the district. If the use requires a special use permit, variance or site plan, those items would have to be acquired before the use commences. If a condition is withdrawn prior to final action, the matter is to be returned to the Planning Commission for another hearing. The petition would go back to the Planning Commission for comments, if additional conditions were offered. The added conditions would not be the subject of an

additional hearing. Interested parties might be unaware of a proposed condition if the offer is made after the Planning Commission's initial hearing.

The language in these two ordinances could turn the rezoning into a negotiation session. Any aggrieved parties may choose to make a legal challenge.

Purchase of Development Rights

The purchase of development rights is an incentive-based tool for influencing land management. Ownership of land includes a number of rights. Most rights can be separated from the surface of a piece of land. For example, mining companies often sell property, retaining the mineral rights. When markets make mining profitable, they have the right to remove the mineral. A landowner can sell the right to exclude one or more individuals from his property, which is recorded as an easement. In all these cases, ownership of the land is retained. Rights are permanently relinquished through recorded documents. The land itself can be sold separately, and in some cases the severed rights can be sold (i.e. the mining company can sell its mineral rights to a third party; the easement can be tied to another parcel and transfers with it. Selling the right to develop property began in the 1970's when the rising value of essential farmlands and increasing taxes forced farmers to sell.

Benefits to local units are:

- preservation of desired amenity
- avoid outright purchase
- save money
- owner responsible for management & maintenance
- land stays on tax role

Benefits to landowners are:

- retains the land
- receives cash
- reduced land value/ taxes
- allowed defined usage of land
- limits inheritance taxes

A local unit of government may incorporate a program to purchase development rights into their zoning ordinance or a separate ordinance adopted under Act 110. Creating a purchase of development rights program does not expand the condemnation rights of the governmental unit. It is strictly a voluntary program. A PDR can be a win-win situation. No local unit has exercised this option to date.

Transfer of Development Rights is a variation of purchase of development rights. It is not specifically addressed in the Michigan Zoning Enabling Act. It is similar to purchase of development rights. It is a tool that can direct development to targeted areas. The transfer of development rights is market driven and entirely voluntary. In existence for more than 20 years and is most common in large cities. In this instance the rights are sold to another individual who can add them to the allowable development on their property or sell them to yet another party. Usually an ordinance identifies a sending area and receiving area and the parameters under which a transfer may occur. If an ordinance allows a 4 story building, the land owner could negotiate a sale of 1, 2, 3 or 4 of the stories to a developer who will build a 6 story structure in a targeted zone with a height limit of 2 stories. The local unit would review the proposal and the draft permanent covenant. If it meets the conditions specified in the ordinance, the covenant is recorded. A certificate of transfer must accompany any zoning compliance permit application.

A certificate of transfer is also used to sell the development rights to a third party, if allowed in by the ordinance.

Special Uses / Conditional Uses

The Michigan Zoning Enabling Act allows making provision for special uses within a zoning district. These were allowed by the preceding enabling legislation and are frequently referred to as conditional uses.

The act does not address re-notification if a hearing is requested as a response to a notification of the petition and a right to request a hearing. Language in the act is basically a continuation of language in the prior enabling acts for what is commonly known as a conditional use. Most local units have opted for some form of special use (See Table 4, page A-4).

The City of Negaunee limits its special uses to multiple family structures, billboards, boarding houses, and bed & breakfasts. The zoning ordinance contains standards for approval. Setbacks from Teal Lake, which are technically not a use, are also mentioned as special approval. The setback is based upon a set distance from the lake, that making language a special approval or overlay zone, rather than a special use.

The City of Marquette lists conditional uses for each of its zoning districts. A separate section lists the intent of conditional uses, procedures for applying and for reviewing, specific conditions for each use, standards for review and approval, and authorization to establish additional conditions suited to the individual site, when necessary to assure compliance with the standards. An aggrieved party (applicant or other individual) may file an appeal in the circuit court. Powell Township lists conditional uses, an application procedure, etc. It also provides for *“SPECIAL USE AUTHORIZED BY PLANNING COMMISSION: Special uses within a zoning district will be at the discretion of the Planning Commission following a public hearing to hear comments concerning the special use”*. This language appears for every zoning district. No special uses are identified for any of the zones. There are no standards of approval. In effect, allowing a use not listed as a permitted principal, accessory or conditional use would in fact be a use variance.

The new legislation requires a listing of:

- Special uses that are allowed
- Any specific requirements, documentation & supporting materials
- Procedures and review process
- Identification of the authorizing entity (zoning commission, planning commission, zoning administrator or legislative body)
- Notification (mandatory public hearing if discretionary decision or option to request a public hearing)
- Public hearing (optional or on request in response to the notice)
- Standards for approval if the decision is discretionary, and
- Mandatory approval if required conditions and standards are met

USE VARIANCES

Only townships that have actually granted a use variance in the past, and cities allowed by their creating ordinance can grant them under Act 110. In some instances, courts have upheld the granting of a use variance by specific units of government. Use variances usurp the authority of governing bodies. They can also play havoc with a community's carefully thought out master plan. For this reason, the majority of local zoning ordinances prohibit them.

Only the City of Negaunee's ordinance allows use variances. It recognizes the impact that use variances can have on their surroundings and the credibility of the ordinance. It states:

Section 1264.05 VARIANCES.

*In addition to the general powers provided in Section 1264.03, the Board of Zoning Appeals may, in specific cases after public notice and hearing, authorize by permit, a variation of the application of the height, area or other dimensional regulations established in this Zoning Code, provided that the variation is in harmony with the general purpose and intent of the regulations, as follows **Allowable use variances include temporary buildings, public service-utilities, industrial accessory, or construction or structural change where there is a practical difficulty.***

The Negaunee City Board of Zoning Appeals Bylaws reads: *The concurring vote of a majority of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to effect a variation in an ordinance except that a concurring vote of 2/3 of the members of the board is necessary to grant a variance from uses of land permitted in an ordinance.*

FEES

MZEA allows the local legislative body to collect fees for zoning related permits. Table 7, Zoning Fee Structures, page A-7, summarizes some of the fees charged by local units. Most of the fees are set by resolution. An amendment would be required to change fees within the ordinance.

In addition to basic fees, Humboldt Township charges five-times the permit fee as a fine plus the cost of the permit for work commenced without a permit. Several other local units charge an additional fee for permits issued after commencement of work.

Several units identify situations where fees are not charged, such as those initiated within the units departments.

Tilden Township has a fee structure, but fees are also listed within its 1983 zoning ordinance. There is a significant increase currently being charged. To avoid the necessity of frequently amending the ordinance, it should indicate that fees are authorized and will be set by action of the Township Board.

NEW TRENDS

Since Euclidian Zoning first came on the scene, there have been trends in zoning. First was a hierarchy of uses with single family at the peak of a pyramid that allowed all uses in the base

zone, then came separation of incompatible uses, and performance-based regulation. Currently the trend is form-based codes and sustainable communities, which encourage mixed uses, working where you live and reduced impact on the environment. Similarly as technology advanced and lifestyles changed, new regulations for things like parking lot design swimming pools and decks were incorporated into ordinances. This chapter will address some of the recent “hot issues”, those that may develop, and some that have not yet been incorporated.

Form-Based Zoning

Most of the zoning ordinances enforced within Marquette County are based upon separation of use, with mixed commercial and residential components. Marquette Township has an ordinance that is based upon performance. The City of Marquette has recently adopted two form-based codes: The Downtown Waterfront Code and the South Marquette Waterfront Code. *A form-based code is a method of regulating development to achieve a specific urban form. Form-based codes create a predictable public realm by controlling physical form primarily, and land uses secondarily, through city or county regulations.*

-- Form-Based Codes Institute definition

Form Based Zoning controls land-development through standards related to building placement and form. It specifies the design framework of the built environment and public areas. It has “build to” lines as opposed to “setbacks”. The buildings form the walls of outdoor public areas. They are designed to encouraging pedestrian usage, which strengthens the neighborhood. Building size and guidelines for uses create the flexibility needed to address current and future needs of the community. Form Based Codes use many graphics to illustrate regulations.

Another trend includes new areas of regulation within the traditional zoning format.

Outdoor Wood Burning Boilers/Furnaces

Due to the ready availability of wood and tight budgets, there has been an increase in use of outdoor wood burning boilers and furnaces. Poorly designed stoves, and those with inadequate chimneys, frequently smoke. Insufficient combustion air or use of wet or treated wood or garbage is another cause of excessive and odiferous smoke. This can be a nuisance or health hazard to residents of adjoining properties. Six townships regulate these units through their zoning ordinance. The City of Marquette and Powell Township have separate ordinances.

Regulations range from out-right prohibition within the City of Marquette to mandatory distances from property lines or neighboring houses or minimum site size. In Ely Township, they are conditional uses. In Forsyth Township, they are a special exception use, with a ½-acre minimum site. The application must show the adjoining dwelling units and prevailing winds. Ely Township requires a minimum stack height of at least 12 feet, and the stack/chimney top must be at least as high as the roof of any off-premise residences located within 300 feet. Other regulations prohibit use of treated wood or garbage, limit operation between May 31st and September 1st, and/or require spark arrestors and/or placement on concrete.

Wind Energy Conversion Systems

Only five townships have adopted language for regulating wind generators. Powell Township does not, but has apparently approved four wind generators at the Loma Farms property.

The Chocolay Township Zoning Ordinance defines a *Wind Energy Conversion Systems, (WECS)* as *A machine that converts the kinetic energy in the wind into a useable form, commonly known as a “wind turbine, wind generator or windmill,” the WECS includes all parts of the system, including, but not limited to the tower, pylon or other structure upon which any, all or some combination of are mounted. See section 6.5 [sic section 6.6] for zoning districts, permitted uses and conditions for approval.* The township allows these systems in all zoning districts. The ordinance specifies they are to be non-commercial. However, sale of excess power, from time to time, is not illegal. Maximum height is 175'. The Planning Commission may determine setbacks. The WECS cannot *“block, interfere or otherwise impair a scenic vista, corridor or the view of a residential structure”*.

Ely and Negaunee Townships have taken a stronger stand. They define small, medium, and large wind energy systems based upon generating capacity. They limit tower heights to 100' and 164'. Negaunee Township provides for higher towers if necessary. Setbacks can range from 110% in Negaunee Township to 150% of the extended height of the tower and blades from property lines or the external boundary of participating parcels.

In addition, Ely Township requires the towers of large wind generating systems to be:

- 1600 feet from any single family or seasonal dwelling located on a participating parcel,
- 3300 feet from any single family or seasonal dwelling on a non-participating parcel, and
- 200% of the total extended height of the tower and blade from any public road right of way and any overhead utility lines.

Both units require numerous technical studies and simulations, analysis of background noise, noise emission levels, shadow flickering, avian and wildlife impact, etc, plus extensive site plan review.

Telecommunication Towers

With technological advances and FTC regulations, the day of regulating big satellite dishes has passed. Many units have retained traditional language that exempts public utilities from regulations. Others require minimum lot areas and setbacks of the zone. Some require the setbacks to be equal to the height or height plus an additional distance. Several units differentiate between attached and supported equipment. For example:

Attached Wireless Facilities: *Wireless communication facilities affixed to existing structures, including but not limited to existing buildings, towers, water tanks, or utility poles.*

Wireless Communication Support Structure: *Structure erected or modified to support wireless communication antennas. Support structures within this definition include, but shall not be limited to monopole, lattice towers, light poles, wood poles, and guyed towers or other structure which appear to be something other than a mere support structure.*

In the City of Marquette, the Zoning Administrator can approve attached facilities and additions and modification to support structures. Up to an additional 30 feet can be added to a support structure, provided it is done to facilitate additional users. To reduce visual impact, administrative approval is given under certain conditions to replacing guyed towers with monopoles. The ordinance also provides for AM Tower arrays.

Negaunee Township prohibits towers from being within a mile of each other, to prevent development of arrays. The Planning Commission can require additional setback requirements to Special Land Use Permits for towers within 1,000 feet of a property zoned for residential use.

Several units require painting to facilitate blending with the sky, or disguising towers as light or flag poles, trees or other items.

Adult / Sexually Explicit Entertainment

Past court decisions and the zoning enabling act have made it clear that zoning cannot prohibit any land uses, unless there is no site within the jurisdiction that meets the needs of that land use. On the advice of the Michigan Township Association, several townships have added language to regulate adult entertainment. Restrictions include distances from residences, schools, churches or religious institutions, recreation areas and daycare providers. Most have designated them as conditional uses in a business district. In Ely Township, a sexually explicit business cannot operate in conjunction with any premises licensed by the Michigan Liquor Commission.

Negaunee Township has adopted an extensive definition of Sexually Oriented Business. *Any adult arcade, adult body painting studio, adult bookstore, adult cabaret, adult carwash, adult hotel or motel, adult motion-picture theater, adult mini- motion picture theater, adult massage parlor, adult health/sport club, adult sauna/steam room/bathhouse, adult companionship establishment, adult novelty business, adult modeling studio, sexual encounter center and other premises, establishments, businesses, or places open to some or all members of the public in which there is an emphasis on the presentation or display, depiction or description of "specified anatomical areas" or "specified sexual activities" which the public could see. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry by state- licensed or –registered persons. Activities defined as obscene by Michigan 1984 PA 343 are not lawful and are not included in the definitions of adult uses.*

Negaunee Township allows these uses only as a conditional use in the industrial district south of Co. R. 492. Humboldt Township's Planning Commission held a public hearing on an amendment to address adult entertainment. It continues to work on the language.

Hazard Mitigation

In 2008, Marquette County adopted a hazard mitigation plan. This plan addresses a wide variety of risks. It listed goals, policies, and actions that could minimize them. Since then 18 of the 22 units have adopted the plan; four have not. Adoption makes the local unit eligible to compete for various grant funds. Zoning should be used to reduce the risks posed by many of

the hazards. Yet few local units have amended their ordinance to address specific threats. Two of the top ten hazards include flooding and wildfire.

Negaunee Township has addressed flood hazard. Its ordinance identifies the ordinary high water mark and the 100 year flood elevation for the Hoist and McClure Basin and the Carp River. In the Carp and Dead River and the Morgan Creek watershed plans require elevation surveys. No residential construction may occur in floodways. Conditions for construction on a floodplain are listed.

None of the units address the risk of wildfire. Marquette County has frequent major fires that require evacuation and cause property damage. Humans cause the majority of fires. These fires are located primarily in jack pine forests. Zoning forested areas for small lot development increases the urban-wildland interface, the risk and the potential damage. Narrow and steep driveways limit access by fire equipment. Failure to maintain a defensible open area around structures makes it easy for fires to spread.

Champion, Ely, Forsyth, Marquette, Skandia, and Township address storage tanks. Skandia addresses them only when associated with Mineral Extraction. In addition, Forsyth Township requires pollution incident plans.

Access Management

All units address the provision of off-street parking in some manner. Off-street loading areas are also addressed in some ordinances. These regulations protect the investment in public streets, the primary purpose of which is to move traffic. Generally, access management is a combination of Michigan Department of Transportation and/or County Road Commission and local regulations. Units with larger populations, larger commercial districts, major highways, or primary county roads, have more detailed regulations. Most units have some regulation of driveways used to access to businesses. Richmond Township only regulates driveways for gravel pits. Republic Township regulates the number, width, and distances from intersection for driveways. Forsyth Township regulates the number of driveways in their C-1 district. Twenty-four pages of the Chocolay Township zoning ordinance address an access management overlay zone based upon the Michigan Access Management Guide Book and the US-41 / M-28 Access Management Plan. The standards apply to all parcels fronting on US-41/M-28 and within 350 feet of the right of way. It limits the number of access points. In addition to clear vision triangles and design requirements, it encourages use of cross connections and sharing driveways between adjacent businesses. It requires use and maintenance agreements before creation of shared-driveways. Depending on the size of a development, a traffic impact study could be required. The US-41/M-28 Access Management Coalition and MDOT review these plans as well as the Township Planning Commission or the Zoning Administrator.

Lighting

Light pollution has become an issue in some communities. Nine units now address lighting issues in some way. The City of Marquette controls lighting for new construction it through its administrative standards and site plan review. Chocolay Township requires lighting to be

directed away from residential properties and streets. Light poles may not exceed 20 feet. Flood lights are allowed only for illuminating signs and must be downcast and focused on the message. Gas station canopies must have non-glare lighting. Negaunee City requires lighting installation to avoid shining onto Teal Lake or adjacent lots.

ZONING ENFORCEMENT

Zoning violations were traditionally treated as a misdemeanor. Ignored correction notices were followed by seeking authorization to submit a written complaint to the unit's legal advisor, preparation of a warrant, serving the warrant, appearance before a magistrate, and possibly a trial. Cost of enforcement and delays often outweighed support for the ordinance. This can result in deterioration of public opinion and quality of living.

Local units now have the option of treating zoning violations as civil infractions. Only seventeen of the local units have implemented this option. The process is streamlined, placing responsibility on the alleged violator. Notices to correct the violation, (ranging from 10 to 30 days) are generally issued, they are not required. Citations (appearance tickets), similar to a traffic ticket, are issued.

If the local unit establishes a local violations bureau, initial fines are collected, and retained by the local unit. If the defendant does not respond in the allotted time, and the local unit has established a violations bureau, the ticket must be rewritten and submitted to the court for issuance. Tickets can be issued each day a violation continues, and the fine structure can increase for repeat violations.

The citations can be delivered in person or by first class mail. The recipient has 10 days to respond. Options include 1) admitting responsibility and paying the fine, 2) admitting the responsibility, with an explanation, or 3) denying responsibility. Options 2 and 3 require a written response to Circuit Court—either on the back of the citation or on a separate form available through the court, requesting either an informal or formal hearing before a magistrate (or judge if a magistrate has not been appointed). The Zoning Administrator and/or the Code Enforcement Officer, defendant and witnesses may attend the informal or formal hearings. Attorneys are not present at an informal hearing. They may be present at a formal hearing. However, because this is not a criminal violation, there is no court appointed attorney for the defendant. A pre-trial hearing is held in an attempt to resolve the issue before scheduling the formal hearing.

Failure of a defendant to respond, to appear at a hearing, or comply with a court order is a misdemeanor. A default judgment can be entered for failure to appear.

SECTION 9: ZONING MAPS

Historically zoning maps have been difficult to maintain. Early maps had lettered areas with penciled boundaries or colored with crayon. Later a patterned adhesive was placed on a mylar sheet that contained a base-map roads and water bodies. The layers were then copied onto light sensitive paper with a special (and sometimes odiferous) machine. Computer aided design programs (CAD) increased the ease of modifying a zoning map, but only if you had the equipment, program and knowledge to use them. Engineering firms have assisted several local units with CAD-based maps. In recent years, geographic information systems (GIS) have greatly advanced the creation and updating of zoning maps. But the need for equipment, programs, and knowledge still keeps this form of zoning map out of the reach of many townships. As a result, the County's Resource Management/ Development Department is entering into partnerships with local units. The County creates and maintains accurate zoning district data in a GIS format.

The local unit provides information on rezonings. They receive up-to-date, accurate, and professional looking maps. The unit receives free GIS viewing software and the zoning data. This allows the townships to share maps, (or targeted areas of maps) in a variety of sizes. The Township can produce paper maps on their office printers and can send maps electronically. The maps can be posted on the Township's website. In addition, the software can be used to identify the 300' notification area for required hearings. For a nominal fee plus printing costs, the county can prepare a 3' x 4' colored for public display at the Town Hall.

The Resource Management/Development Department uses zoning information in its review of proposed zoning amendments, assessing future growth in the County and for sharing information with the public. Accurate zoning data will assist the county's staff in analyzing land use impacts into the future. One of the features of a GIS is the ability to layer data, such as soils, transportation, land use, various utilities, and dwelling units. Qualitative and quantitative information can be quickly generated that will help with decision-making.

RM/DD currently has agreements with Ely, Forsyth, Marquette, Powell, Richmond, and Wells Townships to produce their zoning maps. RM/DD and CUPPAD are jointly working with Tilden Township to update its comprehensive plan and produce their zoning map. The County previously prepared the Marquette Township Zoning Map. In addition to the units listed above, at least one other township is actively updating its zoning map with the assistance of CUPPAD.

Many of the local maps reviewed for this plan lack required or valuable information, such as signatures of the Town Clerk and Supervisor, the original date of adoption, and dates of amendment. See Table 8, Zoning Map Contents, page A-8. It is strongly recommended that a table with file numbers (or address or section number) of amendments and dates be placed near the map's legend. It is also suggested that when a map is made available online, that the date of posting be prominent along with an advisory that the official map is located in the

Township Offices and should be consulted prior to taking any action. If a map is produced in several sheets, each sheet should bear the signatures, original date of adoption and the amendment information for that segment of the map.

SECTION 10: AVAILABILITY OF ZONING INFORMATION

Access to zoning information varies widely across the county. Many of the units with small populations have very limited town hall office hours. Most of the websites that are currently available do not have office hours posted. Response to voice mail messages is often delayed or does not occur.

Marquette County was one of five counties that participated in an Information Technology for Intergovernmental Cooperation program to improve communications between local units of government and between the local units and the public (including residents, property owners, and tourists). The County focused on creating a Community Information System (CIS website) in which included local information relating to land use planning and zoning, government services, and the ability to interact with elected and appointed boards and commissions. Links provided access to other websites. Township officials received training to allow them to maintain their own portion of the site. Three public access kiosks were located within the county. Website preparation took approximately two years. The official inauguration was in 2001.

A ten-year review of the website showed that most of the information is outdated. Several units have established their own websites. They have not updated or removed their information on the CIS. Other units have not maintained their information (See Table 9, Local Planning and Zoning Information on the Internet, page A-9). The domain name of the site expires 2010. At that time, the site will cease to function. This will leave 13 of 22 local units without an internet presence. Only four units will have their office hours available over the internet. However, the outdated and inaccurate information has not served either the local units or the public for several years.

Keeping information current remains a problem for many of the local units with their own sites websites. One of the biggest issues for the public is that there is often no way of discerning the status of the information. All postings should be dated. A disclaimer should be prominent stating a number to call for current information. Each unit should assign one webmaster to monitor and update the site on a set day each week or month. An e-mail link to the webmaster should be available to report problems.

For example, Champion Township now has its own website. Information on zoning is not is provided. The Planning Commission meeting schedule is over a year old; The Township Board's meeting information is over two years old.

Chocolay Township now has its own website. It has done a good job in making planning and zoning information available. The zoning ordinance and map are available, as are other ordinances. There are links to recent amendments of the map and text. It lists Planning & Zoning Board of Appeals membership with links for e-mails. Links provide access to two years of minutes for the Township Board, Planning Commission, and Zoning Board of Appeals.

JOINT PLANNING COMMISSION AND ZONING BOARD MEETING

Because the zoning ordinance is a tool for planning implementation, it is important that there be communication between planning commissioners, their respective zoning board and their legislative body. This is somewhat facilitated for boards with a planning commissioner seated and planning commissions with a member of the legislative body seated. However, there are benefits to having the full membership of these bodies discuss issues of concern. Meeting once every year or two should be adequate to keep lines of communication open. Each board member or commissioner could identify a topic of concern, with the chairpersons and supervisor putting together an agenda prior to the meeting. The meeting could be the mandatory annual meeting of the Board of Zoning Appeals, (if the unit has little zoning activity) or a special meeting devoted to that specific purpose. The meeting must comply with the Open Meetings Act.

Other perspectives will broaden understanding of problems. Consideration should be give to inviting the zoning administrator. Citizen comments can help identify problems and concerns, but they should not be directly involved with the discussion.

TRAINING NEEDS

Every year, numerous planning commissions and zoning boards of appeals become entangled in legal issues – issues that could be extremely costly. Frequently these issues could have been avoided. The Michigan Planning Association, the Michigan Township Association, MSU's Planning and Zoning Center, the CUPPAD Regional Planning Commission and other government agencies periodically offer training. When they are available within reasonable distance, one or more representatives of the local unit should attend. In addition to learning from the presenters, attendees from other units have much to offer.

The County's Resource Management / Development staff is also available for one-on-one assistance or small group training.

SECTION 11: GOALS AND POLICIES

Webster's Third New International Dictionary defines a goal as . . . "2: the end toward which effort or ambition is directed; a condition or state to be brought about through a course of action". It defines a policy as ". . . 5a: a definite course of action or method of action selected (by a government, institution, or group, or individual) from among alternatives and in the light of given conditions to guide and use."

Local zoning is pertinent to meeting the goals set by individual townships and Marquette County. To be effective, zoning must be true to the long range plans of the local unit. There must be consistent application of planning principals at all levels. Every goal and policy should be reviewed. Every planning commissioner and zoning board of appeals member should be familiar with what their legislative body, (on behalf of all residents and property owners in its jurisdiction) was attempting to accomplish by adopting the zoning ordinance.

Since the County does not have a zoning ordinance, the goals in this plan are directed towards assisting local planning commissions, zoning boards of appeals and the County Planning Commission fulfill their legal duties and to bring their local unit closer to meeting its goals and the County's goals.

General Goal. Implementation of local and county plans

Sub-goals.

1. Reestablishment of zoning by Ewing and Turin Townships.
2. Maintenance of airspace in the vicinity of KI Sawyer International Airport
3. Protection of the function of County Roads through access management
4. Protect water and timber resources
5. Protect and enhance the function of all state highways within the county.
6. Adoption of the US-41 Access Management Plan by all affected local units by reference, or inclusion of management principals and regulations in their comprehensive plan or as a stand-alone ordinance,
7. Adoption of the County Hazard Mitigation Plan by the remaining five local units.
8. Inclusion of local aspects of the County Hazard Mitigation Plan and related recommendations into local zoning ordinances. Inform local units that copies of Marquette County Goals & Policies are available on the County website (www.co.marquette.mi.us)

Policies.

1. Assist the Airport Board/Airport Manager with distribution of the Airport Approach Plan or airport layout plan to affected local units.
2. Encourage local units with high risk erosion areas to review updated recommendations for setbacks.

3. Provide local units with access to up-to-date copies of County Plans in digital format. Make a paper copy available upon request.
4. Assist units of government with accurate placement of overlay zones on their zoning maps.
5. Encourage assessors to include overlay zoning on field cards for affected parcels.
6. Encourage local units to post their zoning ordinances and maps on a website.

General goal. All aspects of local zoning ordinances being in compliance with state law.

Sub-goals.

1. Adoption of bylaws by local planning commissions and zoning boards of appeals.
2. Membership representative of a range of interests and locations.
3. Increased public awareness of the benefits of zoning.
4. Availability of zoning ordinances, maps and forms to the public.
5. Improve enforcement.

Policies. Recommend the County Board adopt a new planning enabling ordinance and appointment of a seventh member to the County Planning Commission (representative of a school district) if possible; otherwise educational interest.

1. Evaluate areas of representation on the Marquette County Planning Commission & make recommendation to the County Board if an imbalance exists and additional diversity is warranted.
2. Maintain a library (digital or paper format) of up-to-date- local plans, ordinances and bylaws within the Resource Management / Development Department.
3. Request copies of annual reports to monitor trends in zoning activity.
4. Conduct thorough reviews of all future amendments to plans and ordinances.
5. Send County zoning review reports to planning commissions as well as township boards.
6. Monitor local responses to Marquette County Planning Commission recommendations regarding plans, and zoning text & map changes.
7. Extend offer of GIS mapping partnership to local units.
8. Make model bylaws and hearing procedures available to local units.
9. Create a checklist for staff review of a local zoning ordinance.
10. Provide townships with links to inexpensive website creation programs; encourage exploration of website partnerships with local school districts / technology classes.
11. Encourage local units to respond to zoning issues and needs with consideration of scientific fact and compliance with local and county plans.
12. Maintain composite zoning and future land use maps.
13. Provide information regarding zoning changes along common boundaries

General Goal. Provide quality service, while containing costs.

Sub-goals.

1. Minimize exposure to lawsuits.
2. Reduce printing costs.
3. Utilize appearance tickets for enforcement.
4. Conduct efficient reviews of ordinances and amendments.

Policies.

1. Encourage local zoning administrators, commissioners and board members to take advantage of training opportunities.
2. Provide local assistance and training as requested or needed.
3. Encourage evaluating the feasibility of units sharing professional staff to increase accessibility during regular office hours.
4. Encourage use of classified ads for routine hearings.
5. Encourage participation in the map partnership and use of GIS maps for identification of notification area and parcels.
6. Create a checklist for staff review of a local ordinance.
7. Create a checklist of county goals and policies for township planning commission consideration.